IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 29161 of 2003(V)

PETITIONER:

THE DEVASWOM EXECUTIVE OFFICER,
KARIKKAD DEVASWOM, THRIKKALANGODE,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

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1. VANIYAMBALAM BANAPURAM DEVI KSHETHRA SAMRAKSHANA SAMITHI COMMITTEE, RPERESENTED BY ITS SECRETARY.

2. PATTIKKADAN VEERAN HAJI,
VANIYAMBALAM AMSOM, MALAPPURAM DIST.

3. MALIYAKKAL JOHNY,
VANIYAMBALAM AMSOM, MALAPPURAM DIST.

4. ROMAN CATHOLIC ST.MARY CHRISTIAN CHURCH,
REPRESENTED BY ITS PRESIDENT, VANIYAMBALAM,
MALAPPURAM DIST.

5. NECHIKKADAN AMINA,
VANIYAMBALAM, MALAPPURAM DIST.

6. VAKKODAN UMMAR,
VANIYAMBALAM, MALAPPURAM DIST.

7. MUHAMMED,
VANIYAMBALAM, MALAPPURAM DIST.

8. AFIFA,
VANIYAMBALAM, MALAPPURAM DIST.

9. SAKEENA,
VANIYAMBALAM, MALAPPURAM DIST.

10. ABASATHA,
VANIYAMBALAM, MALAPPURAM DIST.

11. JAMEELA,
VANIYAMBALA, MALAPPURAM DIST.

12. ASSYA,
VANIYAMBALAM, MALAPPURAM DIST.

13. ANSAR,
VANIYAMBALAM, MALAPPURAM DIST.

14. SAINUDHEEN,
VANIYAMBALAM, MALAPPURAM DIST.

15. MARIYUMMA,
VANIYAMBALAM, MALAPPURAM DIST.

16. KARIM,
VANIYAMBALAM, MALAPPURAM DIST.

BY ADV. SRI.K.SHRIHARI RAO
SMT.N.SHOBHA
SRI.P.N.ANOOP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 29161 OF 2003

APPENDIX

PETITIONER'S EXHIBIT:

EXT.P1 : TRUE COPY OF THE ORDER IN IA NO.1528 OF 2003 IN OS NO.275 OF 1991 ON THE FILE OF THE SUBORDINATE JUDGE, MANJERI DT.31.7.03.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 29161 OF 2003

Dated this the 12th day of June, 2007

JUDGMENT

Service of notice on all the respondents is yet to be completed. But since it is proposed to invoke supervisory jurisdiction under Article 227 and in the nature of the decision which is being taken it is not necessary that this Court should wait till all the respondents are served with notice.

2. Heard Sri.K.M.Sathyanatha Menon, counsel for the petitioner and Sri.Shrihari Rao, appearing for the 1st respondent.

3. Ext.P1 order dismissing an application for amendment of plaint is impugned by the plaintiff. The suit was filed in the year 1991 as one for injunction. An advocate commissioner who was deputed to inspect the properties reported in 1996 that the plaint schedule property was in possession of various persons namely some of the respondents herein. The amendment application is filed on 24.07.03 when the suit was special listed for trial. The learned Sub Judge was rightly not impressed by the explanation offered by the petitioner for the delay and dismissed the application mainly on the ground of delay. On reading through Ext.P1 I have to agree with the learned Sub Judge that the amendment which is filed 11 years after institution of the suit and 7 years after the

Advocate Commissioner filed report, was highly belated. However, it cannot be said that the amendment would have caused legal prejudice to the respondents or any injustice to any of the parties if allowed with prospective effect. The learned Sub Judge in my opinion should have allowed the application putting the petitioner to very strict terms and directing that the order of amendment will be only prospective in effect. Accordingly setting aside Ext.P1, I allow IA No.1528 of 2003 on condition that the petitioner pays Rs.2,000/- each to those respondents who are reported by the Advocate Commissioner to be in possession of the plaint schedule properties within three weeks of receipt of copy of this judgment. Payment can be made either directly to the respondents or through the counsel appearing for them in the court below. Similarly the petitioner will also pay a sum of Rs.1,000/- to the High Court Legal Services Committee within three weeks of receiving copy of this judgment and produce receipt before the court below.

It is clarified that the order of amendment will be prospective only i.e. with effect from 24.07.03 the date when the amendment application is filed. The court below will permit all the contesting defendants to file additional written statements. It is open to them to raise all available pleas including bar of limitation. If plea of limitation is raised by any of the defendants, the learned Sub Judge will decide the issue regarding

the limitation first, but after permitting parties to adduce evidence on all issues including the issue of limitation. If all the conditions regarding the payment are not complied with, Ext.P1 will stand confirmed and the writ petition will stand dismissed. Being a suit of the year 1991, the learned Sub Judge will give top priority to the suit and will special list the suit and dispose of the same at the earliest and at any rate within six months' of receiving a copy of this judgment.

PIUS C. KURIAKOSE, JUDGE

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